IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Mohan Lal
vs.
Manohar Lal and another.

S.B.CIVIL SECOND APPEAL NO.152/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 7.4.2005 PASSED BY SUSHRI PRABHA SHARMA, ADDITIONAL DISTRICT JUDGE NO.1, BHILWARA IN CIVIL APPEAL NO.24/2005.

DATE OF JUDGMENT ::: 13.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. SD Purohit, for the appellant.
Mr. Manish Pitaliya, for the respondents.

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BY THE COURT:

Heard learned counsel for the parties.

The following substantial question of law is involved in this appeal:-

"Whether the two courts below were right in decreeing the suit of the plaintiffs/respondents

for eviction of the appellant/defendant/tenant despite the fact that the plaintiff neither prayed for decree for eviction specifically or by implication nor he has paid the court fees seeking decree for eviction of the tenant ?"

At the request of learned counsel for the parties and in view of the legal issue involved and in view of the fact that copy of plaint and written statement are available, the appeal is finally heard.

I need not to narrate the detail facts of the case in view of the fact that it is clear from a bare reading of the plaint itself that the plaintiffs filed the suit only for recovery of arrears of rent amounting to Rs.13,125/- and for declaring the tenant as defaulter. The peculiar fact is that the plaintiffs in their plaint, after pleading that the tenant committed default in payment of rent, sought recovery of arrears of rent amounting to Rs.13,125/- only which is the rent, according to the plaintiffs, from 1.4.1997. In the para for giving valuation of the suit, the suit has been valued only on the basis of arrears of rent (for Rs.13,125/-) and suit has not been valued for seeking decree of eviction of tenant by paying the court fees on one year's rent of the premises. Strangely, in the relief clause also, the plaintiffs prayed that the decree of Rs.13,125/- may be passed in favour of the plaintiffs and prayed for award of the interest in accordance with law and also prayed that the defendant may be declared defaulter.

The declaration of defaulter is also not sought specifically but it is mentioned that the decree of default be passed against the defendant. This important fact probably escaped the notice of both the courts below, therefore, both the courts below after determining the rent of the suit premises instead of declaring the defendant/appellant as defaulter in payment of rent of the suit premises passed the decree for eviction.

In addition to the above, it is clear from the written statement filed by the tenant that the defendant very specifically took a plea that he is tenant in the suit premises since last 80 years and the present suit has been filed fraudulently to get the defendant declared defaulter, therefore, the defendant understood the suit as of declaring the defendant as defaulter only and not understood the suit as suit for eviction of the tenant. Issues were framed by the trial court only to the effect that whether the defendant has committed default in payment of rent ? and whether the plaintiff is entitled to recover the rent ?

On the basis of the pleas taken by the defendant, the issue was also taken that the suit is barred by time which could only be taken as the issue for recovery of rent.

In view of the above, both the courts below exceeded the jurisdiction for decreeing the suit for eviction against the defendant from the rented premises.

In view of the above, this appeal is partly allowed,

the judgment and decree of the trial court dated 2.2.2005 is modified, the eviction decree is set aside and it is declared that the defendant/appellant committed first default in payment of rent and the suit is decreed for Rs.13,125/- as claimed by the plaintiff. However, it is made clear that in case, the defendant has deposited the rent in time or delayed, the plaintiff shall be entitled to withdraw the said amount from the trial court and in case, the rent has not been deposited by the defendant before the trial court in any manner, the plaintiff shall be entitled to recover the decreetal rent.

(PRAKASH TATIA), J.

S.Phophaliya